

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

RECEIVED

RICHARD P. METTKE,

Plaintiff,

vs.

Civil Action No. 98-PT-0596-E

TOUCHNET INFORMATION
SYSTEMS, INC.,

Defendant.

AFFIDAVIT OF JOHN F. MURPHY

John F. Murphy, being first duly sworn, deposes and states as follows:

1. I, John F. Murphy, have been employed by TouchNet Information Systems, Inc. (formerly, TouchFax Information Systems, Inc.) since May 1, 1990. The address of TouchNet Information Systems, Inc., is 15520 College Boulevard, Lenexa, Kansas 66219.
2. In 1992 I held the position of Marketing Manager. I currently hold the position of Vice-President of Market Development.
3. My employment by TouchNet from May 1, 1990 to the present in the above-identified positions has provided me with personal knowledge of the facts which follow hereinafter.

EXHIBIT

326526

4 6-16-98
llh

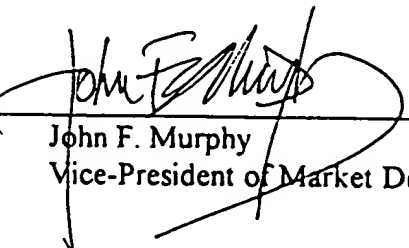
4. Exhibit 3 is a letter from me to BELLSouth Telecommunications, Inc., dated June 11, 1992. This letter is a sales offer to BELLSouth to buy TouchNet Public Access Terminals. On page one of my letter are identified two attachments: "Appendix A" and "Additional Information". "Appendix A" provides a full description of the equipment included in the Public Access Terminals and the sheet titled "Additional Information" specifically states that Prodigy access is a current service of the device.
5. The statement contained in Exhibit 3, specifically, that Prodigy access was a current service of the TouchNet Public Access Terminal, is known personally by me to be a true statement. In addition TouchNet Public Access Terminals having the Prodigy software for accessing the Prodigy on-line service were available for sale and/or lease at least as early as May 1993.
6. Exhibit 4 is a sales letter to Linda Coyner of BELLSouth in Atlanta, Georgia, which offers the TouchNet device and which includes "access to Prodigy" (paragraph 4) by the device as part of the offer for sale.
7. The statement contained in Exhibit 4, specifically, that Prodigy access was a current service of the TouchNet Public Access Terminal, is known personally by me to be a true statement.

8. Defendant's Exhibit 2, a video tape attached to this Affidavit, shows TouchNet has been selling and publicly using a product since, at least, May 1993 which allows a user in a public area to connect to an on-line service and to pay for this connection using a credit card. The Prodigy on-line service was installed and operational on the TouchNet device in 1993 as shown in the Exhibit 2 video tape.
9. Some of the TouchNet Public Access Terminals shown and operated in the Exhibit 2 video tape were, at the time the video tape was made, located and operating for public use at: The Kansas City Plaza Branch Public Library, Kansas City, MO; Alphagraphics at 110th & Quivira Rd., Overland Park, KS; and Independence Center Shopping Center, Independence MO.
10. Exhibit 5 is the first billing invoice from VPR Creative Group, the producer of the Exhibit 2 video tape. Exhibit 5 is dated May 12, 1993 and references the video tape title "TOUCHFAX AMERICA" which appears in the opening screen of Exhibit 2.
11. Exhibit 6 is the final billing invoice from VPR Creative Group, the producer of the Exhibit 2 video tape. Exhibit 6 is dated May 31, 1993 and references the video tape title "TOUCHFAX AMERICA" which appears in the opening screen of Exhibit 2.

12. Several hundred copies of the Defendant's Exhibit 2 video tape titled "TOUCHFAX AMERICA" were caused to be made by TouchNet Information Systems, Inc., during 1993. These video tapes were shown and publicly distributed by me and other TouchNet employees to potential customers during 1993 while offering the device for sale and/or lease.
13. In November 1993 from November 15-19, I attended the COMDEX/Fall '93 computer trade show in Las Vegas, Nevada. During that time I worked in the exhibition space rented by TouchNet Information Systems, Inc.
14. While working at the TouchNet Information Systems, Inc., exhibition space at COMDEX/Fall '93 I exhibited to the public and distributed to the public copies of a sales and marketing and promotional video tape titled "TOUCHFAX AMERICA". A copy of this video tape is attached to this Affidavit and has been marked as Defendant's Exhibit 2.
15. Exhibit 7 is a letter confirming the reservation of exhibition space at COMDEX/Fall '93 by TouchNet. Exhibit 7 also shows the dates of COMDEX/Fall '93 as being November 15-19. It was at this computer marketing and sales meeting that copies of the Exhibit 2 video tape were distributed to the public.

16. Exhibit 8 is an invoice for the TouchNet exhibition space at COMDEX/Fall '93. This invoice shows the payment on November 9, 1993 of the final amount due for rental of the space.

TOUCHNET INFORMATION SYSTEMS, INC.

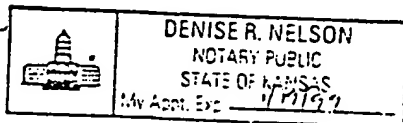
By: 
John F. Murphy
Vice-President of Market Development

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing AFFIDAVIT OF JOHN F. MURPHY was sworn to and subscribed before me this 19th day of May 1998, by John F. Murphy, Vice-President for Market Development of TouchNet Information Systems Inc., who acknowledged to me that he executed the same for the uses and purposes therein expressed, acting for and on behalf of said corporation, in his capacity as such officer.

My appointment expires: 1/19/99

SEAL





Notary Public

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing AFFIDAVIT OF JOHN F. MURPHY was served
via U.S. Mail, postage prepaid, this 20 day of May, 1998, upon:

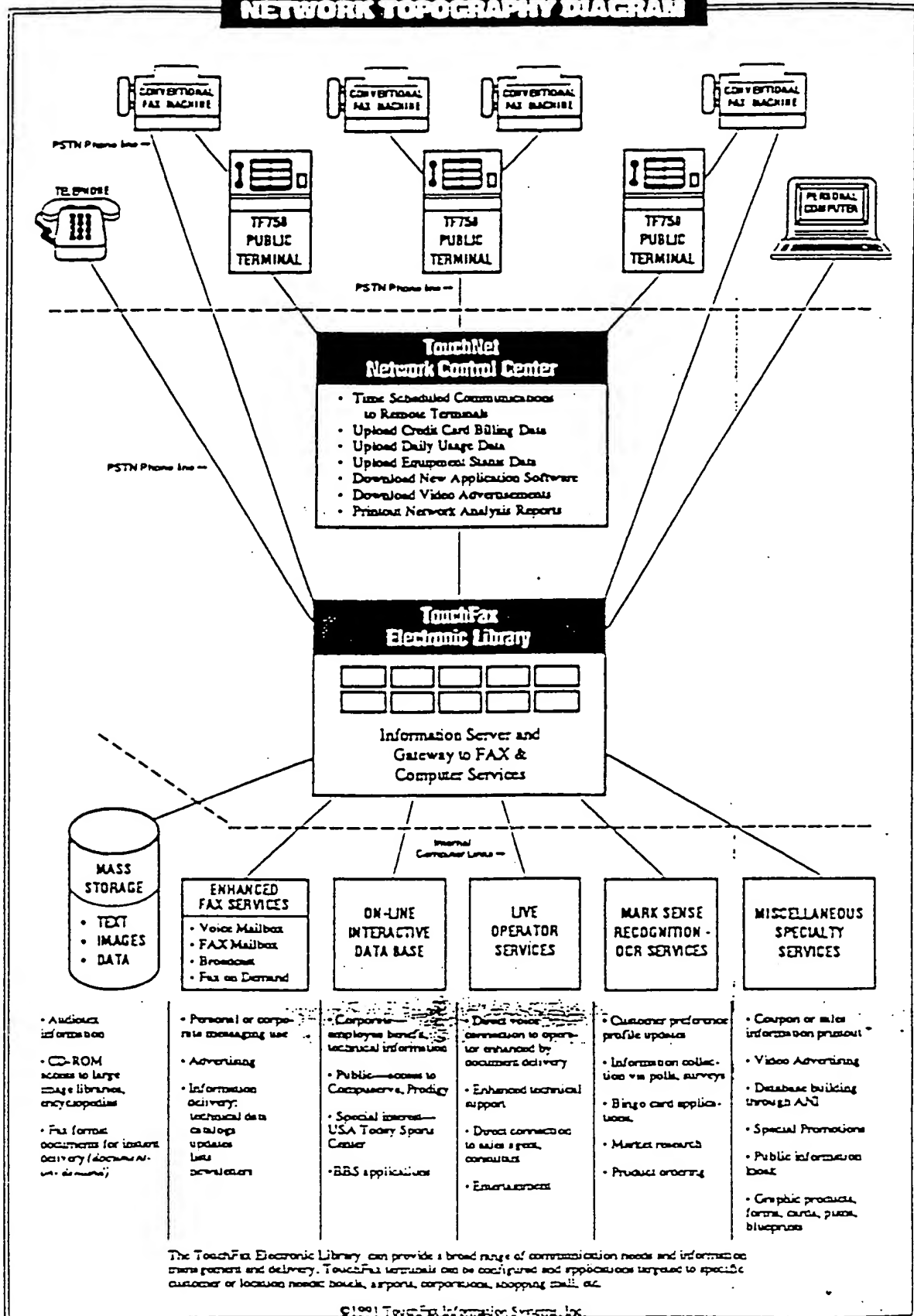
Stephanie Keller Womack
LIGHTFOOT, FRANKLIN & WHITE, L.L.C
300 Financial Center
505 20th Street North
Birmingham, AL 35203

Edward W. Goldstein
Darin H Duphorne
TOBOR & GOLDSTEIN, L.L.P.
1360 Post Oak Blvd., Suite 2300
Houston TX 77056

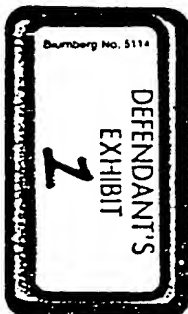

Richard P. Stitt

TouchFax

NETWORK TOPOGRAPHY DIAGRAM



Best Available Copy



June 11, 1992

Mr. R. Neal Funk
BELLSOUTH TELECOMMUNICATIONS, INC.
675 W. Peachtree St., N.E.
39L783 Southern Bell Center
Atlanta, Georgia 30375

Re: Response to Request for Information on Public Access Terminals

Neal:

TouchFax Information Systems, Inc. is excited to respond to *BELLSOUTH's* request for information about Public Access Terminals (PATs). From our company's beginning, it has been our vision to create a public access "tool set" to help people communicate more effectively as technology changes. By designing our products around a computer with both voice and data access, we have a platform that can interact with any form of device on the other end of the call.

More important, we agree with your observation that the user interface of a PAT is a critical factor in the acceptance, operation, and ultimate success of a new product. A collection of sophisticated hardware will sit idle unless it is not only extremely easy to use, but clearly inviting to someone that is not familiar with the operation of the terminal. TouchFax has tremendous experience in creating inviting, easy to use interfaces through a touch sensitive screen. With no intimidating buttons or knobs, a user simply touches the function desired right on the screen. Each screen has only 1 simple decision to make, and always has a Help button and a Quit button available. Exit polls have shown an outstanding success rate for first time users of our terminals.

Enclosed with this letter is the following information:

- Our latest marketing brochures
- Appendix A, which give a general description and uses of our products
- Additional Information about the products and services created by TouchFax.

We are encouraged that *BELLSOUTH* is taking a leadership role in providing advanced communication solutions to their customers. We believe this program will provide tangible results in increased use on your network, more access charges, more lines and more revenue, along with the intangible results of showing leadership in providing state of the art communication services to the public.

Please feel free to contact me with any questions you may have.

Sincerely,

TouchFax Information Systems, Inc.
John F. Murphy
Marketing Manager



APPENDIX A

TouchFax terminals are built around a computer that is hooked into the telephone network. Literally, we can customize the terminals to have different features for different user groups or offer services that are independent or part of the whole. With a programmable tool set that can communicate voice, data or images, TouchFax terminals are very capable to fill the needs in your generic requirements numbered 1-1.5.

Up to this point, we have concentrated on the public access to enhanced services other than traditional telephone services. However, the PATs are very capable of performing these services. Additionally, we have chosen not to integrate a coin or cash reader into our terminals because our target market usually carries credit cards. We have the capability and space to integrate a cash/coin reader into our system..

The same is true for debit card readers. Our terminal is very capable of integrating a debit system into operation. Up to this point, we have not experienced the market demand for this service. However, we have the capability to add this type of reader to our system. Our experience with our other clients makes us very confident that we can meet the challenges in working with large corporations to customize our terminals and software to fit in with your network needs and requirements.

The following summarizes the Integrated ServicesSM program:

A. TFSeries Public Access Terminals

1. PC Platform - TouchFax machines are computer based (with hard disk storage) and therefore have tremendous flexibility in programming, customization, business services offered, and the ability to expand with changes in technology. The TouchFax PATs also come with a keyboard for non verbal communications and access to other services. The computer gives the TFSeries Public Access Terminals the ability to easily interface with a variety of communication platforms, formats, and service applications.
2. Touchscreen Color Monitor- A high resolution 14 inch color monitor is matched with a touch sensitive screen overlay to create a main interface that is extremely easy for the customer to use. This combination allows for colorful graphic displays in any language, and eliminates intimidating buttons. There is no user interface available that is more inviting to the customer.
3. Logical Software - Because of the touchscreen interface, TouchFax is able to create very user friendly software, making it extremely unlikely for a customer to become confused or disenchanted while operating our machine.

4. Plain Paper Output - TouchFax products print presentation quality documents on plain paper using a laser printer with 300 dots per inch (DPI) clarity. The consumer will perceive a significant quality difference receiving their documents on plain bond paper and will associate this quality with the operator of the machine. It is our belief that within a short period of time thermal paper printers will become obsolete.
5. Flatbed Scanner - All TouchFax products utilize flatbed optical scanners. Consumers generally are more comfortable with this as the machine's operation is similar to that of a standard copy machine. Research has shown sheet feed system to be unreliable for the public market due to paper jams and destruction of the original documents.
6. Advertising Capabilities - TouchFax machines offer the opportunity for the owner to use colorful video advertisements as an additional revenue source. The video ads can be linked to a plain paper coupon printout for immediate feedback to be given to the customer, and can be incorporated into point of purchase applications.
7. Cabinet Design - TouchFax machines have been precision engineered from the inside out to keep all components in optimal positions for installation, maintenance and upkeep. The cabinets are sturdily constructed of high quality materials, and are available in colors to match each corporations specifications.
8. TFSeries Family of Models - The TouchFax TF750 is currently in production and is being utilized by companies like AT&T, LANDIS & GYR (of Geneva Switzerland) and SPRINT. TouchFax is currently under production of the TF400 Public Access Terminal which is designed to meet the new ADA accessibility requirements and fit in a standard payphone enclosure, or be mounted on a free standing kiosk. The TF400 is fully configured with the same components as the TF750, although in a smaller package. All TFSeries models are computer based with touchscreen interface and flat bed scanner. Our family of models fit each location and customer need.

B. Enhanced Fax Services

1. Fax Platform - TouchFax has developed a fax server platform to offer Fax Mailboxes, Fax on Demand, Store and Forward, and an Information Services Interface. We can offer use of this platform as a service provider, or can integrate our software with interact with other enhanced fax platforms.

2. Ubiquitous Access - This platform can be used directly with any fax machine, both conventional and our Public Access Terminals, and is designed to increase the usage of conventional fax machines and our terminals.
3. Revenue Generation - Fax Mailbox subscribers (to the BellSouth platform or TouchFax platform) will provide increased message use on the network, service charges and monthly revenue generated through their subscription fee. Fax Mailbox subscribers will also drive usage on the Public Access Terminals. Each service enhances the use of the other.

C. Information Services

1. Target Market - Subscribers to Fax Mailboxes or users of the Public Access Terminals are the primary target market for Information Services. These customers exhibit a comfort level with facsimile, and have shown their willingness to adapt to the benefits to the new technology. In addition, the subscribers and Public Terminal users are ready to bill for the services, through their subscription, or to the credit card used on the terminal.
2. Targeted Services - The first Information Services offered should reflect the needs of the Fax Mailbox subscribers and users of the Public Access Terminals. Once the needs of these customers are met, the market will expand to others who are becoming more aware of the benefits of facsimile. BellSouth could offer a convenient service to their customers such as complimentary directory information to hasten public awareness and acceptance of the services.
3. Revenue Generation - Information Services will increase message use on the network, increase access charges, and produce revenue from the actual services.

All of the Integrated ServicesSM need to be available to maximize the message growth, service charges and new revenue generated by the project. Each service compliments and promotes usage of the other services and each service gains momentum by the availability of the other services.

Additional Information

TouchFax has created not only the public access terminals, but we create operation systems to manage a network of our terminals, as well as offering information services to our customers.

TouchNet

TouchNet is our proprietary software management system that allows a central location to remotely manage a network of our machines installed in the field. TouchNet runs in a multitasking environment that can access 8 PATs simultaneously, or is expandable to more ports, manages the polling sessions, the site/location lists, the maintenance information, the billing records and processing, as well as software updates.

TouchNet is an extremely easy to use package that is mouse driven with pull down menus and utilizes default scripts or allows for customized programmability. The system is in operation in Kansas City, as well as for several of our customers in their locations. TouchFax can provide this service, or can let *BELLSOUTH* operate the management software.

Information Services

TouchFax is developing the TouchFax Electronic Library, that is an assortment of information that can be reached from any fax machine, or from our public terminals. Currently we offer services like:

- **Funnybone Fax**
- **Official Airlines Guide (OAG) Flight Fax**
- **Prodigy Access**

As well as other information services. We can provide access to your customers to services that are up to date, as well as convenient.

TouchFax

15520 College Boulevard

Lenexa, Kansas 66219

July 13, 1992

To: Ms. Linda Lee Coyner
VP of Sales and Marketing
Plaza Level
1100 Johnson Ferry Road N.E.
Atlanta, Georgia 30342

From: John F. Murphy
Marketing Manager
TouchFax Information Systems, Inc.
913-599-6699
913 599-5588 FAX
2 Pages in this fax transmission

Re: Article from June 29th issue of Telephony Magazine

Linda:

Good press on your upcoming Information Services Gateway to be launched in Orlando. We are in agreement that communications are a commodity that should be delivered in the format that the customer desires. We also agree that this type of service needs mass appeal and an incredibly easy to use and access interface to be a success. People know and understand how to use voice services, and we believe that knowledge will easily transfer to fax (mail) services.

To bridge the gap between traditional delivery of services to the more advanced services will still take some work. Luckily, each segment of the population you are targeting knows and understands (if somewhat rudimentary) what facsimile is. It is basically a way of "*cramming a piece of paper into a phone, and having it come out the other end.*" TouchFax has built our multi-function communication terminal around this service because it is needed, understood, and used heavily today. Once people see our terminal, they realize that it is a place where they can get a piece of paper (information) to or from somewhere else. They do not have to understand anything else.

Our terminals provide a tangible icon for your service, are very easy to use, and will open a new distribution channel for the other services you will be bringing out down the line. We also have the ability to work with you on offering a special interface, credit card, and billing structure for your customers. It makes no sense to have the capabilities of your platform but to have people reluctant to use it because they can't understand the conventional pay fax machines, or are turned off by the high prices charged to access the service.

Since our terminal can communicate voice for calls and audio text services, images for fax transmissions as well as documents stored on the hard drive, and data transmissions like E-Mail and access to Prodigy, TouchFax is uniquely positioned to help you reach your goals. Together with the fact that there is no easier terminal to use, we believe our terminals will offer credibility and acceptance over and above the revenues generated.

We look forward to a successful business relationship.

Pb: 913-599-6699

1-800-869-7FAX

Fax: 913-599-5588

John F. Murphy



NB.

We also offer innovative services like the enclosed Funnybone Fax.

[Signature]

Best Available Copy



1627 West 92nd Street - Kansas City MO 64114 - Tel: 816-444-8988 - FAX 816-822-8636

INVOICE

9300105-1N

PAGE NO: 1

SOLD TO

TOUCHFAX
15520 COLLEGE BLVD.

OVERLAND PARK, KS 66219

ATTN: JOHN MASSEY

DATE 05/12/93

JOB NUMBER 0656

P.O. NUMBER

STAFF

TITLE TOUCHFAX AMERICA

DATE	DESCRIPTION	AMOUNT
------	-------------	--------

PROGRESS BILL - COSTS TO INCLUDE:

SCRIPT WRITING, PRE-PRODUCTION, INITIAL DEPOSIT
ON SHOOTING & TALENT, AUDIO PRODUCTION TO DATE.

PROGRESS BILLING AMOUNT: 4,500.00



JCM

POSTED
6/17/93

PAYMENT DUE UPON RECEIPT

A 1.5% LATE CHARGE WILL BE ADDED TO ACCOUNTS 30 DAYS PAST DUE.



Best Available Copy



1609 west 22nd street - kansas city, MO 64114 - tel. 816-444-8988 - fax 816-672-8636

INVOICE

9300170-1N

PAGE NO: 1

SOLD TO

TOUCHFAX
15520 COLLEGE BLVD.

LENEXA, KS 66219

ATTN: RICH BRUURSEMA

DATE 05/31/93
JOB NUMBER 0656
P.O. NUMBER
STAFF

TITLE TOUCHFAX AMERICA

DATE	DESCRIPTION	AMOUNT
------	-------------	--------

FINAL PROGRESSIVE BILL - COSTS TO INCLUDE:

PROJECT COORDINATION, AUDIO PRODUCTION,
CAMERA OPERATOR, TECHNICIAN, TALENT, AND
CATERING.

AS PER BID.

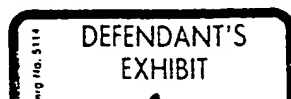


TOTAL CHARGES:	7,500.00
LESS PREVIOUSLY PROGRESS BILLED:	4,500.00
NET INVOICE AMOUNT:	3,000.00

PAYMENT DUE UPON RECEIPT

jc m

A 1.5% LATE CHARGE WILL BE ADDED TO ACCOUNTS 30 DAYS PAST DUE.



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The World's #1 Computer and Communications Marketplace for Resellers and Corporate Decision Makers
November 15-19, 1993 • Sands Expo and Convention Center and other sites • Las Vegas, Nevada USA
June 22, 1993

Mr. John F. Murphy
TOUCH FAX
15520 College Boulevard
Lenexa, KS 66219

Dear Mr. Murphy:

Enclosed is your accepted copy of your Application and Exhibit Space Contract for COMDEX/FALL '93 which was submitted during COMDEX SPRING/WINDOWS WORLD '93. Our records indicate that booth number # A1566 (20 x 20) has been selected by your company in the COMDEX/FALL '93 Show.

To confirm this booth commitment, please submit your check for the amount indicated on the enclosed invoice.

Several months before the show, and within enough time to accommodate your needs for the following, we will send you a "service package" which includes forms for:

1. Hotel reservation information at the "Show Hotels."
2. Advance exhibit staff registration forms.
3. Guest ticket request forms.
4. Exhibit Description/Product Locator forms (for pre-show magazine "show issues" and program guide.)
5. An exhibit service manual, which includes forms for drayage, furniture rental, electrical, telephone, etc.

Since we intend to keep your name on our mailing list, and even though you are already a confirmed exhibitor, you will be receiving our usual promotional mailings for information purposes only.

Once again, we would like to thank you for your continued participation and support of our COMDEX SPRING/WINDOWS WORLD Show. We would like to officially welcome you as an exhibitor in COMDEX/FALL '93. Please feel free to contact me if I can be of any assistance.

Cordially,

COMDEX/FALL '93

Barbara Powers
Director, Sales Administration

BP/ps



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The World's #1 Computer and Communications Marketplace
for Resellers and Corporate Decision Makers

1993-COMDEX/Fall '93
FEDERAL ID: 11-2239919

INVOICE # 82529
Date 10/27/93 52083

BILLED TO:

TouchFax Information Systems,
15520 College Blvd.
Lenexa, KS 66219
Attn: John F. Murphy

Amount Due Now:

To ensure proper credit, please detach top portion and send it with your remittance.

BOOTH	CURRENT BOOTH AMT	15580.00
A1566	(20 X 20) ** SUB TOTAL **	15580.00
	(1 BOOTH)	

AMOUNT DUE TO DATE 15580.00

TOTAL EXHIBIT FEE 15580.00

PAYMENTS RECEIVED - THANK YOU 10193.33

AMOUNT DUE NOW 5386.67

Make checks payable to: COMDEX/Fall

Mail to: COMDEX/Fall
c/o INTERFACE GROUP - MASSACHUSETTS, Inc.
P.O. Box 585, Needham Heights, MA 02194-2722
Telephone (617) 449-6600 • Telex 174273 • Fax (617) 449-6953
Fed. ID # 11-2239919

CC 2301 933

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